

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT



Appeal No. 14093, of Hugh J. Beins, pursuant to 11 DCMR 3200.2 and 3105.1, from the decision of the Zoning Administrator, dated August 23, 1983, approving the issuance of Building Permit No. B-297556 for the construction of a rear addition, and from the decision made on October 27, 1983, to rescind a stop work order and allow the construction to continue at 3813 Jocelyn Street, N.W., in an R-1-B District (Square 1856, Lot 54).

HEARING DATES: February 8, and 15, 1984; March 13, 1985; September 17, 1986; and September 19, 1990.

DECISION DATES: February 15, 1984 (Bench Decision); May 1, 1985; November 6, 1986; and October 3, 1990.

FINDINGS OF FACT:

1. The property that is the subject of this appeal is located on the north side of Jocelyn Street, N.W., between 38th and 39th Streets, and is known as premises 3813 Jocelyn Street, N.W. The property is improved with a single-family dwelling that was constructed before 1958. Before the construction that is at issue in this appeal, the minimum depth of rear yard was less than 25 feet.

PROCEDURAL BACKGROUND

2. The instant appeal was filed on November 28, 1983. Appellants are the owners of, and reside at, 3812 Kanawan Street, N.W., immediately to the north of the subject property, across a public alley that is twelve feet wide.

3. By letter dated December 6, 1983, ANC 3G asked several questions about the case and the Zoning Regulations. By letter dated December 15, 1983, the Executive Director responded appropriately to ANC 3G.

4. By letter dated January 17, 1984, ANC 3G stated that it would not then comment on the substantive aspects of this case.

5. The appeal challenges the decision of the Zoning Administrator approving Building Permit No. B-297556, dated August 22, 1983, allowing the construction of a rear addition at premises 3813 Jocelyn Street, N.W., and the decision, dated October 27, 1983, to rescind a stop work order, dated October 26, 1983, which rescission allowed construction to continue.

6. The bases for the appeal are as follows:

- a. The permit was erroneously issued;
- b. The stop work order was improperly rescinded;
- c. The District violated due process by its failure to give notice and a hearing at any time, in particular about a meeting held on October 27, 1983;
- d. Portions of the construction violate the twenty-five foot rear yard requirement; and
- e. The construction violates the Zoning Regulations governing enlargement, expansion, or extension of existing non-conforming structures or uses.

7. The permittees under Permit B-297556, who own the subject property, appeared as parties to the case, pursuant to 11 DCMR 3399.1.

8. Permittees moved to dismiss the appeal on the following grounds:

- a. The Government of the District of Columbia is estopped from revoking the building permit issued for construction of an addition and other work; and
- b. The appeal is barred by laches.

9. By order dated May 29, 1984, the Board dismissed the appeal on the ground that the District of Columbia was estopped from revoking the building permit. The Board did not reach the issue of laches. Appellants petitioned to the District of Columbia Court of Appeals for review of the Board's decision. After certain proceedings, the Court granted the Motion of the District of Columbia to remand the case to the Board. After remand, the Office of the

Corporation Counsel advised the Board that: (1) estoppel does not apply to appellants; (2) the Board should deny the motion to dismiss the appeal on the basis of estoppel; and (3) the Board should proceed to address the issue of laches. The Chair so ruled as a preliminary matter to the hearing on March 13, 1985.

10. By order dated November 8, 1988, the Board dismissed the appeal on the ground that the appeal was barred by the laches of appellants in filing the appeal.

11. Appellants petitioned to the District of Columbia Court of Appeals for review of the Board's decision to dismiss the appeal.

12. By decision dated March 30, 1990, the Court of Appeals reversed the decision of the Board. The court held that the permittees had not made the showing necessary to support the application of laches in this appeal.

13. On September 19, 1990, the Board conducted a hearing on the merits of the appeal. As a preliminary matter at the hearing on the merits, the Board considered and denied the request of the permittees that the hearing be postponed to allow them to seek corrective variances. By letter dated September 10, 1990, ANC 3G had supported a postponement. The Board concluded that proceeding to hear the appeal on the merits would be the fairest, easiest, and clearest way to proceed.

14. ANC 3G has not submitted written comments about the substantive issues that are germane to the appeal.

#### THE MERITS

1. Permittees have completed construction as approved by Building Permit No. B-297556.

2. Before the construction, permittees' house was closer than 25 feet to the rear lot line, in that the garage and family room ("garage wing") were within eight feet of the rear lot line. The remainder of the rear of the house was 25 feet from the rear lot line.

3. The construction had the following effect on the size of the rear yard:

a. The north wall of the kitchen was extended 4 feet toward the rear lot line, so that it came

within 21 feet of that line;

- b. A deck was constructed in the area north of the kitchen and east of the garage wing. The new deck is 8 feet high and extends to within feet of the rear lot line.
- c. The family room above the garage was extended approximately 2 1/2 feet to the west, for its full length, all of which is within 25 feet of the rear lot line; and
- d. To the north of the garage wing, a platform and stairway were constructed. This structural element is within inches of the rear lot line. The stairway leads from the new deck to the ground. There is no door at the north end of the garage wing. Had the deck not been built, this stairway would not lead to the ground from a door.

#### CONCLUSIONS OF LAW

1. Before the construction in 1983, the residence of the permittees did not conform to the rear yard requirements as set forth in 11 DCMR 404.1, because the garage wing was entirely located in the required rear yard.

2. As set forth in as conclusions of law numbered 3 through 7, the 1983 construction violates 11 DCMR 2001.3.

3. The 4-foot addition to the north of the kitchen violates 11 DCMR 2001.3(b) and (c). It does not conform to the 25-foot rear yard requirement, and it extends to the east the pre-1983 encroachment into the required rear yard.

4. The deck violates 11 DCMR 2001.3(b) and (c) in the same manner as the kitchen wall addition.

5. The family room extension in the garage wing violates 11 DCMR 2001.3(b) and (c). It does not conform to the 25-foot rear yard requirement, and it extends to the west the pre-1983 encroachment into the required rear yard. The fact that this enlargement is not on the ground level of the rear yard does not make it conforming. Pursuant to the definition of "yard" in 11 DCMR 199, a yard that is required by the Zoning Regulations must be open to the sky from the ground up.

6. The platform and stairway to the north of the garage wing violate 11 DCMR 2001.3(b) and (c). The platform and stairs do not conform to the 25-foot rear yard requirements, and they extend to the north the pre-1983 encroachment into the required rear yard. Because the nonconforming deck is the only connection between the stairway and a door, the stairway is not rendered conforming by 11 DCMR 2503.4.


7. It would be unreasonable to read 11 DCMR 404.4 as validating the 1983 construction. To do so would essentially nullify the 1983 amendments to the nonconformity provisions of the Zoning Regulations.

8. Because ANC 3G did not submit comments on the substantive merits of the appeal, the ANC comments are beyond the scope of the factual and legal issues before the Board.

Accordingly, it is ORDERED that the appeal is GRANTED, and the decision of the Zoning Administrator is hereby REVERSED.

VOTE: 3-1 (Carrie L. Thornhill and Paula L. Jewell to grant the appeal; William Ensign to grant the appeal by proxy; Charles R. Norris, not voting, not having heard the case; and William F. McIntosh, abstaining.

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY: 

Edward L. Curry  
Executive Director  
Zoning Secretariat

FINAL DATE OF ORDER: JAN 15 1991

UNDER 11 DCMR 3103.1, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."